



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: HMO - 203596

PRELIMINARY RECITALS

Pursuant to a petition filed on October 29, 2021, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on December 23, 2021, by telephone.

The issue for determination is whether petitioner's appeal is ripe.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: none

Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Douglas County. He is a MA recipient, with GHC-Eau Claire his HMO.

2. On or about October 29, 2021, petitioner, by his mother, filed an appeal with the Division of Hearings and Appeals seeking to contest the HMO's denial of anesthesia and facility charge for outpatient oral surgery. Exhibit 2.
3. The Department, by its Nurse Consultant, Michelle Rocca, sent DHA an email that indicated the petitioner did not appeal the denial to the HMO prior to filing the appeal with DHA. Exhibit 1.
4. The petitioner did not provide copies of the HMO's initial denial, his appeal to the HMO, or the HMO's denial upon appeal. The petitioner submitted a dental x-ray with his appeal request to DHA. However, the record does not contain the PA request submitted by petitioner's medical provider or any other medical record or documentation supporting the requested service.

DISCUSSION

Under the discretion allowed by Wis. Stat. §49.45(9), the Department of Health Services (Department) requires certain Medical Assistance (MA) recipients to participate in HMOs. Wis. Admin. Code §DHS 104.05(2)(a). HMOs must provide the same services as those provided to persons enrolled in fee for service MA or BadgerCare Plus. Wis. Admin. Code §DHS 104.05(3) and Contract for BCP HMO Services between the HMO and the Department, Article IV, A (January 1, 2020 – December 31, 2021). The criteria for approval by a managed care program contracted with the Department are the same as the approval criteria employed by the Department for MA recipients who are not mandated to participate in HMOs. See Admin. Code §DHS 104.05(3).

The issue in this case is whether jurisdiction is present to reach the merits of petitioner's appeal. Jurisdiction is available to review a final determination of a denial, termination or reduction of MA. See, Wis. Admin. Code §HA 3.03(1). Normally, the request for approval of a medical procedure would be submitted to petitioner's assigned HMO, which would review the request and either approve or deny it. If the HMO denied the request, petitioner would have the right to file an appeal with the HMO. A right to file an appeal with DHA would only occur if the HMO denied the appeal or failed to respond to it. Wis. Stats. §49.45(5)(ag) and (b)(1).

In this case, the only evidence that a PA request had been submitted on petitioner's behalf and subsequently denied by the HMO is the testimony of petitioner's mother. Neither a copy of the PA request or a notice of denial was produced. The record also does not contain a copy of an appeal filed with the HMO or a decision by the HMO denying the appeal. As such, I find that petitioner has not shown he has exhausted his appeal remedies with the HMO.

I would also note that the burden is placed on the petitioner to demonstrate that the HMO incorrectly denied the requested medical service. The record merely contains a copy of a dental x-ray. There is no further medical documentation or evidence supporting the medical necessity of the requested service. Petitioner would not have met his burden if I were able to reach the merits of his appeal.

Based on the record, this matter is not ripe for adjudication by DHA, and jurisdiction is not yet present. As indicated at the hearing, petitioner should have his medical provider submit a request for approval of the procedure to the HMO. If denied, he would have a right to file an appeal with the HMO. If the denial is upheld, he should request a written copy of that denial, if one is not provided. At that point, he would have a right to file an appeal with the DHA. Copies of the denial letters should be included with any appeal filed with the DHA.

CONCLUSIONS OF LAW

This matter is not ripe for adjudication by DHA, and jurisdiction is not present.

THEREFORE, it is ORDERED

That petitioner's appeal be dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

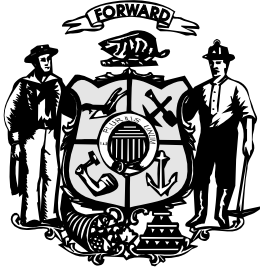
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of January, 2022


s

Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 11, 2022.

Division of Medicaid Services